
By: **Senators Jones, Britt, Currie, Exum, Lawlah, and McFadden**
Introduced and read first time: January 31, 2003
Assigned to: Finance and Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 26, 2003

CHAPTER _____

1 AN ACT concerning

2 **Economic Development ~~Loans or Grants~~ Financial Assistance - Minority**
3 **Business Enterprise Procurement Goals**

4 FOR the purpose of requiring that a recipient of certain ~~economic development loans~~
5 ~~or grants~~ financial assistance awarded by a public or quasi-public State agency
6 under the Economic Development Opportunities Program Fund and the
7 Maryland Economic Development Assistance Authority and Fund to comply
8 with certain minority business enterprise procurement goals under certain
9 circumstances; requiring that certain minority business enterprise procurement
10 goals be included in certain ~~loan or grant~~ financial assistance agreements;
11 ~~expanding an existing termination provision to include certain provisions of this~~
12 ~~Act; defining a certain term~~ authorizing the Department of Business and
13 Economic Development to require certain recipients of financial assistance to
14 submit certain information; requiring the Department to submit an annual
15 report to a certain committee; defining certain terms; providing for a delayed
16 effective date; and generally relating to applying minority business enterprise
17 procurement goals to financial assistance for economic development ~~loans or~~
18 ~~grants~~ awarded by public or quasi-public State agencies under the Economic
19 Development Opportunities Program Fund and the Maryland Economic
20 Development Assistance Authority and Fund.

21 ~~BY~~ repealing and reenacting, without amendments,
22 Article State Finance and Procurement
23 Section 14-301 through 14-305, 14-307, and 14-308
24 Annotated Code of Maryland
25 (2001 Replacement Volume and 2002 Supplement)

26 BY renumbering

1 Article 83A - Business and Economic Development
 2 Section 5-1411
 3 to be Section 5-1412
 4 Annotated Code of Maryland
 5 (1998 Replacement Volume and 2002 Supplement)

6 BY adding to
 7 ~~Article - State Finance and Procurement~~
 8 Article 83A - Business and Economic Development
 9 ~~Section 14-306~~ 5-1411
 10 Annotated Code of Maryland
 11 ~~(2001~~ 1998 Replacement Volume and 2002 Supplement)

12 BY ~~repealing and reenacting, with amendments, adding to~~
 13 Article - State Finance and Procurement
 14 Section ~~14-309~~ 7-314(q)
 15 Annotated Code of Maryland
 16 (2001 Replacement Volume and 2002 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 18 MARYLAND, That Section(s) 5-1411 of Article 83A - Business and Economic
 19 Development of the Annotated Code of Maryland be renumbered to be Section(s)
 20 5-1412.

21 ~~SECTION 1. 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
 22 ~~MARYLAND AND BE IT FURTHER ENACTED,~~ That the Laws of Maryland read as
 23 follows:

24 **Article 83A - Business and Economic Development**

25 5-1411.

26 (A) (1) THIS SECTION APPLIES TO FINANCIAL ASSISTANCE UNDER THIS
 27 SUBTITLE THAT EXCEEDS \$100,000.

28 (2) THIS SECTION DOES NOT APPLY TO FINANCIAL ASSISTANCE USED
 29 SOLELY FOR THE PURPOSE OF ACQUIRING REAL PROPERTY OR STRUCTURES ON
 30 REAL PROPERTY.

31 (B) WITH RESPECT TO FINANCIAL ASSISTANCE UNDER THIS SUBTITLE TO A
 32 LOCAL GOVERNMENT:

33 (1) IF THE LOCAL GOVERNMENT HAS A PROGRAM FOR PROMOTING
 34 PROCUREMENT OPPORTUNITIES AMONG MINORITY BUSINESSES THAT IS
 35 ACCEPTABLE TO THE DEPARTMENT, THE LOCAL GOVERNMENT SHALL APPLY THE
 36 REQUIREMENTS OF THAT PROGRAM TO THE PROCUREMENT OF GOODS OR SERVICES
 37 MADE WITH THE PROCEEDS OF THE FINANCIAL ASSISTANCE.

1 (2) IF THE LOCAL GOVERNMENT DOES NOT HAVE A PROGRAM THAT
 2 MEETS THE STANDARDS UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE LOCAL
 3 GOVERNMENT IS SUBJECT TO SUBSECTION (C) OF THIS SECTION.

4 (C) (1) IN THIS SUBSECTION, "MINORITY BUSINESS ENTERPRISE" MEANS:

5 (I) AN INDIVIDUAL WHO HAS A SOCIAL OR ECONOMIC
 6 IMPEDIMENT THAT:

7 1. IS BEYOND THE PERSONAL CONTROL OF THE INDIVIDUAL,
 8 SUCH AS FINANCIAL CAPACITY, GEOGRAPHICAL OR REGIONAL ECONOMIC DISTRESS,
 9 OR LACK OF FORMAL EDUCATION; AND

10 2. DOES NOT LIMIT THE ABILITY OF THE INDIVIDUAL TO
 11 PROVIDE THE REQUIRED GOODS OR SERVICES; OR

12 (II) A BUSINESS ENTITY THAT IS AT LEAST 51% OWNED AND
 13 CONTROLLED BY INDIVIDUALS WHO MEET THE STANDARDS UNDER ITEM (I) OF THIS
 14 PARAGRAPH.

15 (2) WITH RESPECT TO FINANCIAL ASSISTANCE UNDER THIS SUBTITLE
 16 TO AN ENTITY OTHER THAN A LOCAL GOVERNMENT, THE ENTITY SHALL AGREE TO
 17 INCLUDE IN THE AGREEMENT PROVIDING THE FINANCIAL ASSISTANCE A PROVISION
 18 ACCEPTABLE TO THE DEPARTMENT THAT WOULD ENCOURAGE THE PROCUREMENT
 19 FROM MINORITY BUSINESS ENTERPRISES OF GOODS OR SERVICES PURCHASED WITH
 20 THE PROCEEDS OF THE FINANCIAL ASSISTANCE.

21 (3) IN NEGOTIATING THE PROVISION REQUIRED UNDER PARAGRAPH (2)
 22 OF THIS SUBSECTION, THE DEPARTMENT SHALL TAKE INTO ACCOUNT RELEVANT
 23 FACTORS, INCLUDING:

24 (I) THE INTENDED USE OF THE PROCEEDS OF THE FINANCIAL
 25 ASSISTANCE; AND

26 (II) THE FEASIBILITY OF OBTAINING THE REQUIRED GOODS OR
 27 SERVICES FROM MINORITY BUSINESS ENTERPRISES.

28 (D) THE DEPARTMENT MAY REQUIRE THAT A RECIPIENT OF FINANCIAL
 29 ASSISTANCE UNDER THIS SUBTITLE SUBMIT TO THE DEPARTMENT A LIST, OR AN
 30 UPDATED LIST, OF THE MINORITY BUSINESS ENTERPRISES FROM WHICH GOODS OR
 31 SERVICES WERE PROCURED AND THE NATURE AND DOLLAR AMOUNT OF THE GOODS
 32 OR SERVICES.

33 **Article - State Finance and Procurement**

34 ~~14-301.~~

35 (a) ~~In this subtitle the following words have the meanings indicated.~~

1 (b) "Certification" means the determination that a legal entity is a minority
2 business enterprise for the purposes of this subtitle.

3 (c) "Certification agency" means the agency designated by the Board of Public
4 Works under § 14-303(b) of this subtitle to certify and decertify minority business
5 enterprises.

6 (d) ~~"Certified minority business enterprise" means a minority business
7 enterprise that holds a certification.~~

8 (e) "Economically disadvantaged individual" means a socially disadvantaged
9 individual whose ability to compete in the free enterprise system has been impaired
10 due to diminished capital and credit opportunities as compared to others in the same
11 or similar line of business who are not socially disadvantaged.

12 (f) (1) "Minority business enterprise" means any legal entity, except a joint
13 venture, that is:

14 (i) organized to engage in commercial transactions;

15 (ii) at least 51% owned and controlled by 1 or more individuals who
16 are socially and economically disadvantaged; and

17 (iii) managed by, and the daily business operations of which are
18 controlled by, one or more of the socially and economically disadvantaged individuals
19 who own it.

20 (2) "Minority business enterprise" includes a not for profit entity
21 organized to promote the interests of physically or mentally disabled individuals.

22 (g) (1) Subject to paragraphs (2) and (3) of this subsection, "personal net
23 worth" means the net value of the assets of an individual remaining after total
24 liabilities are deducted.

25 (2) "Personal net worth" includes the individual's share of assets held
26 jointly or as community property with the individual's spouse.

27 (3) "Personal net worth" does not include:

28 (i) the individual's ownership interest in the applicant or a
29 certified minority business enterprise; or

30 (ii) the individual's equity in his or her primary place of residence.

31 (h) "Race neutral measure" means a method that is or can be used to assist all
32 small businesses.

33 (i) (1) Subject to paragraphs (2) and (3) of this subsection, "socially and
34 economically disadvantaged individual" means a citizen or lawfully admitted
35 permanent resident of the United States who is:

1 (i) in any of the following minority groups:

2 1. African American—an individual having origins in any of
3 the black racial groups of Africa;

4 2. American Indian/Native American—an individual having
5 origins in any of the original peoples of North America and who is a documented
6 member of a North American tribe, band, or otherwise has a special relationship with
7 the United States or a state through treaty, agreement, or some other form of
8 recognition. This includes an individual who claims to be an American Indian/Native
9 American and who is regarded as such by the American Indian/Native American
10 community of which the individual claims to be a part, but does not include an
11 individual of Eskimo or Aleutian origin;

12 3. Asian—an individual having origins in the Far East,
13 Southeast Asia, or the Indian subcontinent, and who is regarded as such by the
14 community of which the person claims to be a part;

15 4. Hispanic—an individual of Mexican, Puerto Rican, Cuban,
16 Central or South American, or other Spanish culture or origin, regardless of race, and
17 who is regarded as such by the community of which the person claims to be a part;

18 5. physically or mentally disabled—an individual who has an
19 impairment that substantially limits one or more major life activity, who is regarded
20 generally by the community as having such a disability, and whose disability has
21 substantially limited his or her ability to engage in competitive business; or

22 6. women—a woman, regardless of race or ethnicity, unless
23 she is also a member of an ethnic or racial minority group and elects that category in
24 lieu of the gender category; or

25 (ii) otherwise found by the certification agency to be a socially and
26 economically disadvantaged individual.

27 (2) There is a rebuttable presumption that an individual who is a
28 member of a minority group under paragraph (1)(i) of this subsection is socially and
29 economically disadvantaged.

30 (3) An individual whose personal net worth exceeds \$750,000 may not be
31 found to be economically disadvantaged.

32 (j) "Socially disadvantaged individual" means an individual who has been
33 subjected to racial or ethnic prejudice or cultural bias within American society
34 because of membership in a group and without regard to individual qualities. Social
35 disadvantage must stem from circumstances beyond the control of the individual.

36 14-302.

37 (a) (1) Except for leases of real property and except as provided in
38 paragraphs (2) and (3) of this subsection, each unit shall structure procurement

1 procedures, consistent with the purposes of this subtitle, to try to achieve the
2 following results:

3 (i) a minimum of 7% of the unit's total dollar value of procurement
4 contracts is to be made directly or indirectly from certified minority business
5 enterprises classified by the certification agency as African American owned
6 businesses;

7 (ii) a minimum of 10% of the unit's total dollar value of
8 procurement contracts is to be made directly or indirectly from certified minority
9 business enterprises classified by the certification agency as women-owned
10 businesses; and

11 (iii) an overall minimum of 25% of the unit's total dollar value of
12 procurement contracts is to be made directly or indirectly from all certified minority
13 business enterprises.

14 (2) (i) Except as provided in paragraph (3) of this subsection, in
15 procurement for construction, each unit shall structure procurement procedures,
16 consistent with the purposes of this subtitle, to try to achieve the following results:

17 1. a minimum of 7% of the unit's total dollar value of
18 construction contracts is to be made directly or indirectly from certified minority
19 business enterprises classified by the certification agency as African
20 American owned businesses;

21 2. a minimum of 10% of the unit's total dollar value of
22 construction contracts is to be made directly or indirectly from certified minority
23 business enterprises classified by the certification agency as women-owned
24 businesses; and

25 3. an overall minimum of 25% of the unit's total dollar value
26 of construction contracts is to be made directly or indirectly from all certified minority
27 business enterprises.

28 (ii) The unit shall:

29 1. consider the practical severability of the construction
30 projects; and

31 2. implement a program that will enable the unit to evaluate
32 each contract to determine the appropriateness of the goal.

33 (3) With respect to the Maryland Department of Transportation, the
34 provisions of paragraph (2)(i) of this subsection shall apply only to construction
35 contracts in excess of \$50,000.

36 (4) Each unit shall meet the maximum feasible portion of the goals
37 stated in paragraphs (1), (2), and (3) of this subsection by using race neutral

1 ~~measures to facilitate minority business enterprise participation in the procurement~~
2 ~~process.~~

3 (5) To achieve the result specified in paragraph (1) or (2) of this
4 subsection, a contractor, including a contractor that is a certified minority business
5 enterprise, shall:

6 (i) ~~identify specific work categories appropriate for subcontracting;~~

7 (ii) ~~at least 10 days before bid opening, solicit minority business~~
8 ~~enterprises, through written notice that:~~

9 1. ~~describes the categories of work under item (i) of this~~
10 ~~subparagraph; and~~

11 2. ~~provides information regarding the type of work being~~
12 ~~solicited and specific instructions on how to submit a bid;~~

13 (iii) ~~attempt to make personal contact with the firms in item (ii) of~~
14 ~~this paragraph;~~

15 (iv) ~~assist minority business enterprises to fulfill bonding~~
16 ~~requirements or to obtain a waiver of those requirements;~~

17 (v) ~~in order to publicize contracting opportunities to minority~~
18 ~~business enterprises, attend prebid meetings or other meetings scheduled by the unit;~~
19 ~~and~~

20 (vi) ~~upon acceptance of a bid, provide the unit with a list of minority~~
21 ~~businesses with whom the contractor negotiated, including price quotes from~~
22 ~~minority and nonminority firms.~~

23 (6) (i) ~~The unit shall make a finding whether the contractor complied,~~
24 ~~in good faith, with paragraph (5) of this subsection.~~

25 (ii) ~~If the unit finds the contractor complied with paragraph (5) of~~
26 ~~this subsection, the unit may not require the contractor to renegotiate any~~
27 ~~subcontract in order to achieve a different result.~~

28 (b) (1) ~~The provisions of §§ 14-301(f) and 14-303 of this subtitle and~~
29 ~~subsection (a) of this section are inapplicable to the extent that any unit determines~~
30 ~~the provisions to be in conflict with any applicable federal program requirement.~~

31 (2) ~~The determination under this subsection shall be included with the~~
32 ~~report required under § 14-305 of this subtitle.~~

33 ~~14-303.~~

34 (a) (1) ~~In accordance with Title 10, Subtitle 1 of the State Government~~
35 ~~Article, the Board shall adopt regulations consistent with the purposes of this~~
36 ~~Division II to carry out the requirements of this subtitle.~~

1 (2) The regulations shall establish procedures to be followed by units,
2 prospective contractors, and successful bidders or offerors to maximize notice to, and
3 the opportunity to participate in the procurement process by, a broad range of
4 minority business enterprises.

5 (b) These regulations shall include:

6 (1) provisions designating one agency to certify and decertify minority
7 business enterprises for all units through a single process that meets applicable
8 federal requirements;

9 (2) a requirement that the solicitation document accompanying each
10 solicitation set forth the expected degree of minority business enterprise participation
11 based, in part, on:

12 (i) the potential subcontract opportunities available in the prime
13 procurement contract; and

14 (ii) the availability of certified minority business enterprises to
15 respond competitively to the potential subcontract opportunities;

16 (3) a requirement that the unit provide a current list of certified
17 minority business enterprises to each prospective contractor;

18 (4) provisions to ensure the uniformity of requests for bids on
19 subcontracts;

20 (5) provisions relating to the timing of requests for bids on subcontracts
21 and of submission of bids on subcontracts;

22 (6) provisions designed to ensure that a fiscal disadvantage to the State
23 does not result from an inadequate response by minority business enterprises to a
24 request for bids;

25 (7) provisions relating to joint ventures, under which a bidder may count
26 toward meeting its minority business enterprise participation goal, the minority
27 business enterprise portion of the joint venture;

28 (8) consistent with § 14-302(a)(5) of this subtitle, provisions relating to
29 any circumstances under which a unit may waive obligations of the contractor
30 relating to minority business enterprise participation;

31 (9) provisions requiring a monthly submission to the unit by minority
32 business enterprises acknowledging all payments received in the preceding 30 days
33 under a contract governed by this subtitle;

34 (10) a requirement that a unit shall verify and maintain data concerning
35 payments received by minority business enterprises, including a requirement that,
36 upon completion of a project, the unit shall compare the total dollar value actually

1 received by minority business enterprises with the amount of contract dollars initially
2 awarded, and an explanation of any discrepancies therein;

3 (11) a requirement that a unit verify that minority business enterprises
4 listed in a successful bid are actually participating to the extent listed in the project
5 for which the bid was submitted;

6 (12) provisions establishing a graduation program based on the financial
7 viability of the minority business enterprise, using annual gross receipts or other
8 economic indicators as may be determined by the Board; and

9 (13) other provisions that the Board considers necessary or appropriate to
10 encourage participation by minority business enterprises and to protect the integrity
11 of the procurement process.

12 (c) The regulations adopted under this section shall specify that a unit may
13 not allow a business to participate as if it were a certified minority business
14 enterprise if the business's certification is pending.

15 ~~14-304.~~

16 (a) In the same manner and with the same fees as provided by law in civil
17 cases, in a matter regarding the decertification of a certified minority business
18 enterprise, the certification agency may:

19 (1) subpoena witnesses;

20 (2) administer oaths; and

21 (3) compel the production of records, books, papers, and other
22 documents.

23 (b) If a person fails to comply with a subpoena issued under subsection (a) of
24 this section, or fails to produce documents or other evidence, on petition of the
25 certification agency, a court of competent jurisdiction may pass an order directing
26 compliance with the subpoena or compelling the production of documents or other
27 evidence.

28 ~~14-305.~~

29 (a) (1) Within 90 days after the end of the fiscal year, each unit shall report
30 to the Governor's Office of Minority Affairs and the certification agency.

31 (2) A report under this subsection shall for the preceding fiscal year:

32 (i) state the total number and value of procurement contracts
33 between the unit and certified minority business enterprises, by specific category of
34 minority business enterprise;

1 (ii) indicate the percentage that those procurement contracts
2 represent, by specific category of minority business enterprise, of the total number
3 and value of procurement contracts; and

4 (iii) contain other such information as required by the Governor's
5 Office of Minority Affairs and the certification agency and approved by the Board.

6 ~~(3) A report under this subsection shall be in a form prescribed by the~~
7 ~~Governor's Office of Minority Affairs and the certification agency and approved by the~~
8 ~~Board.~~

9 (b) (1) ~~On or before December 31 of each year, the Governor's Office of~~
10 ~~Minority Affairs shall submit to the Board of Public Works and, subject to § 2-1246 of~~
11 ~~the State Government Article, to the Legislative Policy Committee a report~~
12 ~~summarizing the information the Office receives under subsection (a) of this section.~~

13 (2) ~~This report may be prepared in conjunction with the annual report~~
14 ~~required under § 9-306 of the State Government Article.~~

15 ~~14-306.~~

16 (A) (1) ~~IN THIS SECTION, "ECONOMIC DEVELOPMENT LOAN OR GRANT"~~
17 ~~MEANS A LOAN OR GRANT FOR WORKING CAPITAL, DIRECT INVESTMENT,~~
18 ~~WORKFORCE TRAINING, OR EQUITY ISSUED BY A PUBLIC OR QUASI PUBLIC STATE~~
19 ~~AGENCY TO A BUSINESS OR NOT FOR PROFIT ORGANIZATION FOR THE PURPOSE OF~~
20 ~~EXPANDING OR RETAINING BUSINESS OR EMPLOYMENT OPPORTUNITIES IN THE~~
21 ~~STATE.~~

22 (2) ~~"ECONOMIC DEVELOPMENT LOAN OR GRANT" INCLUDES A LOAN OR~~
23 ~~GRANT ISSUED BY OR USING FUNDING FROM:~~

24 (I) ~~THE MARYLAND ECONOMIC DEVELOPMENT ASSISTANCE~~
25 ~~AUTHORITY AND FUND;~~

26 (II) ~~THE ECONOMIC DEVELOPMENT OPPORTUNITIES PROGRAM~~
27 ~~FUND;~~

28 (III) ~~THE MARYLAND COMPETITIVE ADVANTAGE FINANCING FUND;~~
29 ~~AND~~

30 (IV) ~~THE MARYLAND SMALL BUSINESS DEVELOPMENT FINANCING~~
31 ~~AUTHORITY.~~

32 (B) (1) ~~EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A~~
33 ~~RECIPIENT OF AN ECONOMIC DEVELOPMENT LOAN OR GRANT AWARDED BY A~~
34 ~~PUBLIC OR QUASI-PUBLIC STATE AGENCY SHALL COMPLY WITH THE PROCUREMENT~~
35 ~~GOALS AND REQUIREMENTS FOR MINORITY BUSINESS ENTERPRISES UNDER § 14-302~~
36 ~~OF THIS SUBTITLE.~~

1 (2) ~~THE PROCUREMENT GOALS AND REQUIREMENTS DESCRIBED~~
 2 ~~UNDER § 14-302 OF THIS SUBTITLE SHALL BE CONTAINED IN THE AGREEMENT~~
 3 ~~BETWEEN THE LOAN OR GRANT RECIPIENT AND THE PUBLIC OR QUASI PUBLIC~~
 4 ~~STATE AGENCY THAT IS AWARDING THE LOAN OR GRANT.~~

5 (C) ~~AN ECONOMIC DEVELOPMENT LOAN OR GRANT THAT IS AWARDED FOR~~
 6 ~~THE PURPOSE OF ACQUISITION OF LAND OR A BUILDING IS EXEMPT FROM THE~~
 7 ~~REQUIREMENTS OF THIS SECTION.~~

8 ~~14-307.~~

9 The Legislative Policy Committee shall direct at least 1 standing committee of
 10 the House of Delegates and at least 1 standing committee of the State Senate to
 11 review annually the performance of units as reported under § 14-305 of this subtitle.
 12 ~~14-308.~~

13 (a) (1) A person may not:

14 (i) ~~fraudulently obtain, hold, or attempt to obtain or hold~~
 15 ~~certification;~~

16 (ii) ~~aid another person in performing an act prohibited under item~~
 17 ~~(i) of this paragraph;~~

18 (iii) ~~willfully obstruct, impede, or attempt to obstruct or impede a~~
 19 ~~State official or employee investigating the qualifications of a business entity that has~~
 20 ~~requested certification;~~

21 (iv) ~~fraudulently obtain, attempt to obtain, or aid another person in~~
 22 ~~fraudulently obtaining or attempting to obtain, public moneys to which the person is~~
 23 ~~not entitled under this subtitle; or~~

24 (v) ~~in any minority business enterprise matter administered under~~
 25 ~~this subtitle:~~

26 1. ~~willfully falsify, conceal, or cover up a material fact by any~~
 27 ~~scheme or device;~~

28 2. ~~make a false or fraudulent statement or representation; or~~

29 3. ~~use a false writing or document that the person knows to~~
 30 ~~contain a false or fraudulent statement or entry.~~

31 (2) ~~A person who violates any provision of this subsection is guilty of a~~
 32 ~~felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment~~
 33 ~~not exceeding 5 years or both.~~

34 (b) (1) A person may not make a false statement about whether an entity
 35 has certification.

1 (2) A person who violates this subsection is guilty of a misdemeanor and
2 on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding
3 1 year or both.

4 ~~14-309.~~

5 The provisions of §§ 14-301 through ~~[14-305]~~ 14-306 of this subtitle, and any
6 regulations adopted under those sections, shall be of no effect and may not be
7 enforced after July 1, 2006.

8 ~~7-314.~~

9 (Q) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
10 MEANINGS INDICATED.

11 (II) "FINANCIAL ASSISTANCE" MEANS A GRANT, LOAN, OR
12 INVESTMENT PROVIDED UNDER THIS SUBSECTION THAT EXCEEDS \$100,000.

13 (III) "POLITICAL SUBDIVISION" INCLUDES AN AGENCY OR OTHER
14 INSTRUMENTALITY OF THE POLITICAL SUBDIVISION.

15 (2) THIS SUBSECTION DOES NOT APPLY TO FINANCIAL ASSISTANCE
16 USED SOLELY FOR THE PURPOSE OF ACQUIRING REAL PROPERTY OR STRUCTURES
17 ON REAL PROPERTY.

18 (3) WITH RESPECT TO FINANCIAL ASSISTANCE UNDER THIS SECTION TO
19 A POLITICAL SUBDIVISION:

20 (I) IF THE POLITICAL SUBDIVISION HAS A PROGRAM FOR
21 PROMOTING PROCUREMENT OPPORTUNITIES AMONG MINORITY BUSINESSES THAT
22 IS ACCEPTABLE TO THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT,
23 THE POLITICAL SUBDIVISION SHALL APPLY THE REQUIREMENTS OF THAT PROGRAM
24 TO THE PROCUREMENT OF GOODS OR SERVICES MADE WITH THE PROCEEDS OF THE
25 FINANCIAL ASSISTANCE.

26 (II) IF THE POLITICAL SUBDIVISION DOES NOT HAVE A PROGRAM
27 THAT MEETS THE STANDARDS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE
28 POLITICAL SUBDIVISION IS SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION.

29 (4) (I) IN THIS PARAGRAPH, "MINORITY BUSINESS ENTERPRISE"
30 MEANS:

31 1. AN INDIVIDUAL WHO HAS A SOCIAL OR ECONOMIC
32 IMPEDIMENT THAT:

33 A. IS BEYOND THE PERSONAL CONTROL OF THE INDIVIDUAL,
34 SUCH AS FINANCIAL CAPACITY, GEOGRAPHICAL OR REGIONAL ECONOMIC DISTRESS,
35 OR LACK OF FORMAL EDUCATION; AND

1 B. DOES NOT LIMIT THE ABILITY OF THE INDIVIDUAL TO
2 PROVIDE THE REQUIRED GOODS OR SERVICES; OR

3 2. A BUSINESS ENTITY THAT IS AT LEAST 51% OWNED AND
4 CONTROLLED BY INDIVIDUALS WHO MEET THE STANDARDS UNDER ITEM 1 OF THIS
5 SUBPARAGRAPH.

6 (II) WITH RESPECT TO FINANCIAL ASSISTANCE UNDER THIS
7 SECTION TO AN ENTITY OTHER THAN A POLITICAL SUBDIVISION, THE ENTITY SHALL
8 AGREE TO INCLUDE IN THE AGREEMENT PROVIDING THE FINANCIAL ASSISTANCE A
9 PROVISION ACCEPTABLE TO THE DEPARTMENT OF BUSINESS AND ECONOMIC
10 DEVELOPMENT THAT WOULD ENCOURAGE THE PROCUREMENT FROM MINORITY
11 BUSINESS ENTERPRISES OF GOODS OR SERVICES PURCHASED WITH THE PROCEEDS
12 OF THE FINANCIAL ASSISTANCE.

13 (III) IN NEGOTIATING THE PROVISION REQUIRED UNDER
14 SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT OF BUSINESS AND
15 ECONOMIC DEVELOPMENT SHALL TAKE INTO ACCOUNT RELEVANT FACTORS,
16 INCLUDING:

17 1. THE INTENDED USE OF THE PROCEEDS OF THE
18 FINANCIAL ASSISTANCE; AND

19 2. THE FEASIBILITY OF OBTAINING THE REQUIRED GOODS
20 OR SERVICES FROM MINORITY BUSINESS ENTERPRISES.

21 (5) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT
22 MAY REQUIRE THAT A RECIPIENT OF FINANCIAL ASSISTANCE UNDER THIS SECTION
23 SUBMIT TO THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT A LIST,
24 OR AN UPDATED LIST, OF THE MINORITY BUSINESS ENTERPRISES FROM WHICH
25 GOODS OR SERVICES WERE PROCURED AND THE NATURE AND DOLLAR AMOUNT OF
26 THE GOODS OR SERVICES.

27 SECTION 3. AND BE IT FURTHER ENACTED, That the Department of
28 Business and Economic Development shall report, on or before September 1 of each
29 year, in accordance with § 2-1246 of the State Government Article to the Joint
30 Committee on Fair Practices on the results of the implementation of the provisions of
31 this Act.

32 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
33 effect ~~October 1, 2003~~ January 1, 2004.

